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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of WELLESLEY  
ROLLAND and JOYCE MAY  
LEGGITT-KIME.

B184998

WELLESLEY ROLLAND KIME,

(Los Angeles County  
Super. Ct. No. BD376533)

Appellant,

v.

JOYCE MAY LEGGITT-KIME,

Respondent.

APPEAL from a judgment of the Los Angeles County Superior Court.  
Gretchen W. Taylor, Commissioner. Affirmed.

Wellesley Rolland Kime, in pro. per., for Appellant.

Robert A. Cassio and Charlotte M. Hylton for Respondent.

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## SUMMARY

Wellesley Rolland Kime appeals from a judgment refusing nullification of his “sunset marriage” to his former high school sweetheart, respondent Joyce May Leggitt-Kime. Wellesley insists Joyce engaged in a “bait and switch” scam to fraudulently induce him to marry her.<sup>1</sup> According to Wellesley, Joyce falsely represented she would honor the terms of a premarital agreement on which Wellesley insisted in order to shield his financial assets in the event of divorce. The trial court denied an annulment, finding Wellesley married Joyce because she refused to continue to live with him without marriage for religious reasons, not because she committed fraud. The marriage was dissolved, and the trial court awarded Joyce spousal support and ordered Wellesley to pay a portion of her legal fees. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

Wellesley and Joyce were high school sweethearts. Their romance was rekindled 50 years later, after each had married someone else and had raised a family. Joyce’s marriage ended in the death of her husband; Wellesley’s in an acrimonious divorce. After they had lived together for approximately one year, Joyce told Wellesley that, due to her religious beliefs, she could not continue the relationship unless they married. Wellesley said he did not want to re-marry and risk another adversarial divorce. They agreed to marry after Wellesley, whose income and assets were significantly greater than Joyce’s, proposed that Joyce sign a premarital agreement (Agreement), and she assented.

Wellesley, who in addition to being a retired psychiatrist, is licensed to practice law in California, drafted the Agreement. The Agreement (which is not included in the

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<sup>1</sup> The parties’ first names are used for the sake of clarity, not out of disrespect.

<sup>2</sup> Our factual recitation is taken from our independent review of the record, the facts as determined by trial court and the facts on which the parties agree. We specifically do not rely on Wellesley’s opening or reply briefs, which are replete with references to matters outside the record and/or stricken by the trial court. (See Cal. Rules of Court, rule 14(a)(2)(C); *Kohler v. Interstate Brands Corp.* (2002) 103 Cal.App.4th 1096, 1102 [The parties’ arguments must be confined to evidence in the record; matters outside the record will ordinarily not be considered].)

appellate record) purportedly provides, among other things, that each party retains his or her own separate property interests, no community property exists, and Joyce waives her right to spousal support. The parties did not exchange lists of assets, financial obligations or tax returns at the time of or before executing the Agreement. Neither party was advised or represented by counsel at any point in the process of preparing or executing the Agreement. However, Wellesley told Joyce she could discuss the Agreement with an attorney before signing it, and offered to pay her legal fees if she did. The Agreement was executed on June 27, 1997.

Joyce and Wellesley married in August 1997. Joyce was 66 years old at the time; Wellesley was 67. They separated in July 2002, when Wellesley began to suspect Joyce would not honor the Agreement.

In September 2002, Wellesley petitioned to dissolve the marriage, which was subsequently converted into an annulment request based on the ground that Joyce fraudulently induced him into marriage by executing the Agreement, never intending to honor or abide by its terms.

Trial was conducted on August 5 and 6, 2004. The parties stipulated that no issues of community property or community debt needed to be decided, and that the only matters to be decided by the court were: (1) the nullification of the marriage, (2) the validity of the Agreement, and (3) spousal support and attorney fees. Wellesley and Joyce each testified. At the conclusion of the trial, the court issued verbal ruling that nullification was not in order. The court found that no fraud in the inducement to marry had occurred: “[Wellesley] didn’t get married because of the prenup. He married because [Joyce] wouldn’t live in sin due to religious reasons. So that seemed to have been the basis for the parties deciding to marry. He didn’t want to expose his property to the rights and responsibilities of a married person, but none of those contentions support a nullity.”

The court also found the Agreement was unconscionable and unenforceable, according to the law in effect at the time it was executed. Joyce knew the Agreement was intended to protect Wellesley’s property and future earnings. However, Wellesley, who

enjoyed superior bargaining power in the parties' relationship, had never disclosed the full value of his property and assets. As a result, Joyce was never in a position to make a knowledgeable waiver under the Agreement, because she had no real idea what she was giving up. The court also found Joyce's purported waiver was not made voluntarily because, as reflected on the face of the Agreement, she was in an unequal bargaining position in relation to Wellesley, and never received the advice of independent counsel. Under the Agreement, Joyce agreed to waive her right to independent counsel. That waiver too failed to meet the legal standard for voluntariness. Joyce had no legal knowledge or expertise, and Wellesley never advised her of the legal consequences of such a waiver. Thus, she had no idea how she might have been served by advice from an attorney of her own, and the purported waiver was ineffective. The Agreement was deemed unconscionable and unenforceable, and set aside. The marriage was dissolved. The court awarded Joyce spousal support of \$2,500 per month for up to two years, and ordered Wellesley to pay a contributive sum of \$15,000 of her attorney fees. Joyce's counsel was ordered to timely prepare and submit a statement of decision and judgment conforming to the court's oral ruling. For reasons not stated in the record, those documents were not submitted until just before June 2, 2005, when the court signed and filed the judgment and an interlineated statement of decision.

In the meantime, Wellesley filed a petition for a writ of mandate with this court, and launched a series of attacks in the trial court aimed, in one way or another, at getting the court to reconsider its decision and nullify the party's marriage. None of Wellesley's posttrial efforts was successful, and his writ was summarily denied. Wellesley also attempted to have the trial judge removed from the matter claiming she was biased and had acted unethically and illegally. That effort failed. In August 2005, Wellesley filed this appeal.

## **DISCUSSION**

### **1. Substantial evidence supports the trial court's refusal to nullify the marriage.**

The principal thrust of Wellesley's argument on appeal is that the trial court erred in refusing to nullify the parties' marriage under Family Code section 2210, subdivision

(d).<sup>3</sup> He insists the facts established at trial clearly show Joyce induced him to marry her by falsely representing the sole reason she wished to marry was due to her religious convictions, and by executing a premarital agreement which she never intended to honor. We conclude otherwise.

Section 2210 provides: “A marriage is voidable and may be adjudged a nullity if . . . the following condition[] existed at the time of the marriage: (d) The consent of either party was obtained by fraud, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabitated with the other as husband or wife.” (§ 2210, subd. (d).) Annulment is considered an extreme remedy. It requires fraud that “goes to the very essence of the marriage relation” (*Marshall v. Marshall* (1931) 212 Cal. 736, 739-740), particularly where a marriage has been consummated and the parties have assumed the mutual rights and duties of the relationship. In such cases, considerations of public policy come into play, and courts are extremely reluctant to declare any marriage a nullity. (*In re Marriage of Meagher & Maleki* (2005) 131 Cal.App.4th 1, 3 (*Meagher & Maleki*); *Millar v. Millar* (1917) 175 Cal. 797.)

The showing of fraud necessary to warrant nullification is “ ‘not merely such fraud as would be sufficient to rescind an ordinary civil contract.’ [Citation.]” (*Williams v. Williams* (1960) 178 Cal.App.2d 522, 525.) To void a marriage, the fraud alleged in a nullification proceeding requires a showing of an intention not to perform a duty vital to the marriage, which exists in the offending spouse’s mind at the moment the marriage contract is made. (*Bruce v. Bruce* (1945) 71 Cal.App.2d 641, 643.) Moreover, because public policy strongly favors marriage, the state has a keen interest in ensuring that no marriage is declared void unless fraud is shown by clear and convincing evidence. (*Bing Gee v. Chan Lai Yung Gee* (1949) 89 Cal.App.2d 877, 885; *Williams v. Williams, supra*, 178 Cal.App.2d at p. 525.)

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3 Unless otherwise indicated, all statutory references are to this code.

Historically, annulments based on fraud have only been granted in cases where the fraud relates in some way to the sexual, procreative or child-rearing aspects of marriage. (*Meagher & Maleki, supra*, 131 Cal.App.4th at pp. 7-8.) Fraud warranting annulment is typically found in cases involving a prospective spouse's concealment of his or her intention not to: (1) engage in sexual relations with the other spouse (*In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 156); (2) live in the same house with the other spouse (*Handley v. Handley* (1960) 179 Cal.App.2d 742, 747-748); (3) terminate an intimate relationship with a third person after the marriage (*Schaub v. Schaub* (1945) 71 Cal.App.2d 467, 477-479); or (4) have children with the other spouse notwithstanding a promise to the contrary (*Maslow v. Maslow* (1953) 117 Cal.App.2d 237, disapproved on other grounds by *Lioudas v. Sahadi* (1977) 19 Cal.3d 278, 292-293.) Annulments also have been justified based on a spouse's concealment of his or her sterility (*Vileta v. Vileta* (1942) 53 Cal.App.2d 794), or a wife's concealment at the time of marriage that she was pregnant with another man's child (*Hardesty v. Hardesty* (1924) 193 Cal. 330.)

Only one California case has granted an annulment in a circumstance not directly involving sex or procreation. In *Douglass v. Douglass* (1957) 148 Cal.App.2d 867, the trial court denied an annulment to a wife whose husband, before their marriage, falsely represented to her that he was "an honest, law abiding, respectable and honorable man," who had fathered one child in a prior marriage, a child who was "well provided for." (*Id.* at p. 868.) In fact, the husband had recently been convicted of grand theft, and was arrested for a parole violation shortly after the marriage for failure to pay child support for his two children from a prior marriage. (*Ibid.*) The appellate court found the husband's fraud in concealing his criminal record and true character was "a deceit so gross and cruel as to prove him [to the wife] to be a man unworthy of trust," and reversed the judgment. (*Id.* at p. 870.) In concluding annulment was warranted, the appellate court relied, in part, on the fact that the wife had two children from a prior marriage and that, because of this, the "essentials of the marital relationship," from her perspective, necessarily included a "husband of honorable character whom she could respect and trust, . . . and who would be a suitable stepfather for her children." (*Id.* at pp. 869-870.)

Those “hopes were shattered and her purposes defeated” when she learned her new husband had failed to provide for his own children. (*Id.* at p. 870.) “Thus, even in *Douglass*, the fraud that the court found to be sufficient grounds for annulment had some nexus with the child-rearing aspect of marriage.” (*Meagher & Maleki, supra*, 131 Cal.App.4th at p. 8.)

The recent case of *Meagher & Maleki* also is instructive. In that case, a woman with substantial financial assets, who was nearing her retirement as a physician, and a man in his sixties whom the woman believed was a millionaire with expertise in real estate and finance married after entering into a romantic relationship and several real estate ventures together. After marriage, the couple’s financial situation deteriorated significantly. The wife began to doubt the husband’s representations about his financial status and business expertise. The husband threatened divorce unless the wife ceded to him complete control over all her personal assets. The parties separated when the wife began to suspect her husband had only married her for her money. (*Meagher & Maleki, supra*, 131 Cal.App.4th at p. 5.) The trial court found the wife had relied on the husband’s representations that he was very wealthy and would take care of her, not that he intended to divest her of a significant interest in several million dollars’ worth of property. Based on these findings, the trial court concluded “ ‘there was never a marriage’ ” and entered a judgment of nullity. (*Id.* at p. 6.) The appellate court reversed. It concluded that the wife did not claim her husband lied about his marital history, concealed an intention not to engage in sexual relations or not to share the same house with her, nor had he concealed an intention to continue an intimate extramarital relationship. Rather, the fraud he had committed was of a purely financial nature. That, in the court’s view, was insufficient. Like Wellesley, the wife in *Meagher & Maleki* failed to cite a single “authority . . . , either in California or elsewhere, for the proposition that annulment can be granted based on fraud or misrepresentation of a purely financial nature.” “[T]he cases are entirely to the contrary.” (*Id.* at p. 6.) As a matter of law, such

fraud is simply “not of the type that constitutes an adequate basis for granting an annulment.” (*Ibid.*)<sup>4</sup>

At its essence, this case is no different. Wellesley separated from Joyce when he began to suspect she would not honor, and had never intended to honor, the terms of the Agreement. The sole purpose of the one-sided Agreement was to shield Wellesley’s assets. Thus, even if the trial court had found Joyce committed fraud - which it did not - under *Meaghan & Maleki*, such financial fraud would “not [be] of the type that constitutes an adequate basis for granting an annulment.” (*Meagher & Maleki, supra*, 131 Cal.App.4th at p. 9.)

Moreover, the trial court’s outright rejection of Wellesley’s theory that Joyce committed fraud is clear from the predicate factual findings underlying its refusal to grant a nullification. Based on Joyce and Wellesley’s testimony at trial, the court found Wellesley “didn’t get married because of the prenuptial agreement. He married because [Joyce] wouldn’t live with him without marriage due to religious reasons. So that seems to be the basis for the parties deciding to marry.” If deemed credible, some evidence in the record could support Wellesley’s claim he was deceived into marrying Joyce by believing - based on her signing the premarital agreement - there was no possibility their marriage would end in an adversarial divorce. And, as the trial court readily acknowledged, the Agreement was unquestionably important to Wellesley. Nevertheless, substantial evidence in the record also supports the court’s ultimate factual findings that Wellesley was not the victim of fraud and did not marry because of the Agreement.

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<sup>4</sup> Wellesley asserts, but fails completely to substantiate with a single authority, that the historical principles underlying nullification based on fraud should not apply to a “sunset marriage” such as his, in which no nexus to sex, procreation or child-rearing is possible. First, he has not established that his marriage (or that between any other elderly persons) had no nexus to sex, simply because of the parties’ ages. Indeed, Joyce’s refusal to continue what Wellesley admits was a “romantic relationship” unless they married strongly suggests some intimacy. Second, Wellesley clearly had some purpose to marry independent of a desire to shield his assets. Had that been his sole concern at the time, he could simply have ended the parties’ relationship.



As such, we must affirm. We do not reweigh evidence. So long as substantial evidence supports a judgment, it will be upheld, even if other substantial evidence may support a different result. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053; see also *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631 [A judgment, supported by substantial evidence, will be upheld even if substantial evidence to the contrary also exists and the trial court might decided differently had it believed the other evidence].)

**2. Wellesley has waived his arguments regarding the trial court’s purportedly erroneous invalidation of the premarital agreement, and its award of spousal support and attorney’ fees.**

Wellesley also purports to appeal from portions of the judgment finding the Agreement unconscionable and unenforceable, awarding pendente lite and permanent spousal support to Joyce, and ordering Wellesley to pay a contributive share of Joyce’s attorney fees. However, his opening brief contains no argument directed to those points, and no authority is cited to warrant reversal of those portions of the judgment.<sup>5</sup> Accordingly, Wellesley’s assertions of error on these points is deemed waived.

It is a fundamental rule of appellate review that the judgment appealed from is presumed correct, and “all intendments and presumptions are indulged in favor of its correctness.” (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610, citation omitted.). It is appellant’s burden to provide argument and legal authority to support his contentions on appeal. This requires more than a mere assertion the trial court was wrong. “When an appellant fails to raise a point, or asserts it but fails to

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<sup>5</sup> Wellesley devotes approximately eight lines in his 30-page reply brief to the claim it is unfair to saddle him with Joyce’s attorney fees because her appellate brief was not verified (verification is required), was not submitted in good faith, and “produced a smoke screen of false contentions and confusion that engulfed this case . . . .” Again, no authorities are cited and, apart from vitriolic assertions, no argument is made. If any party has created a “smoke screen” of confusion, it is Wellesley who has persistently failed or refused to abide by the rules governing this appeal.

support it with reasoned argument and citations to authority, we treat the point as waived.” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; see also *Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 477, fn. 4 [contention waived due to appellant’s failure to cite any legal authority]; *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [deeming a point, which was merely asserted by appellant without argument or authority, to be without foundation and to require no discussion by reviewing court].) This requirement is equally applicable to appellants acting without counsel. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522-523.)

#### **DISPOSITION**

The judgment is affirmed. Joyce is awarded her costs of appeal.

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BOLAND, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.